

Übersetzung durch den Sprachendienst des Bundesministeriums der Finanzen.
Translation provided by the Language Service of the Federal Ministry of Finance.
Stand: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 1 des Gesetzes vom 5. Dezember 2012 (BGBl. I S. 2431)
Version information: The translation includes the amendment(s) to the Act by Article 1 of the Act of 5 December 2012 (Federal Law Gazette I, p. 2431)
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Insurance Tax Act

Insurance Tax Act as published on 10 January 1996 (Federal Law Gazette I, p. 22), most recently amended by Article 1 of the Act of 5 December 2012 (Federal Law Gazette I, p. 2431)

Section 1 Tax basis

- (1) The tax applies to the payment of an insurance premium based upon an insurance relationship which has come about either by contract or in some other way.
- (2) If the insurance relationship is with an insurer who is established in the territory of the Member States of the European Union or of other Contracting States to the Agreement on the European Economic Area, then the tax liability exists when insuring the following risks:
1. for risks related to immovables, in particular structures and facilities, and related to their contents except for goods in commercial transit if the precondition is that the objects are located within the territory of application of this Act;
 2. for risks related to vehicles of every type, which are to be registered or are registered in an official or officially recognised register in the territory of application of this Act, and which have a registration plate;
 3. for risks associated with travel or holidays on the basis of an insurance relationship with a term of not more than four months if the policyholder performs the legal acts needed to bring this insurance relationship into existence in the territory of application of this Act.

If the insurance covers risks or objects other than those specified in the first sentence above, the tax liability exists if the policyholder:

1. is a natural person and, at the time when he pays the insurance premium, he has his residence or habitual abode within the territory of application of this Act, or
 2. is not a natural person and, at the time when he pays the insurance premium, the enterprise's registered office, the permanent establishment or the corresponding institution to which the insurance applies is located within the territory of application of this Act.
- (3) If the insurance relationship is with an insurer who is established outside the territory of the Member States of the European Union and of the European Economic Area, then the tax liability arises if:
1. the policyholder, at the time when he pays the insurance premium, has his residence or habitual abode or his registered office within the territory of application of this Act, or
 2. an object is insured which was located within the territory of application of this Act at the time when the insurance relationship was established, or
 3. this insurance relationship directly or indirectly applies to an enterprise, a permanent establishment or other institution within the territory of application of this Act;

this is in particular the case for premises operations liability insurance or for professional indemnity insurance for staff of an enterprise, permanent establishment or other institution.

(4) The German Exclusive Economic Zone also belongs to the territory of application of this Act.

Section 2 Insurance contracts

(1) Where several persons or associations agree to bear in common losses or damage of a type which could be covered by an insurance policy, that agreement is also be deemed to constitute an insurance contract for the purposes of this Act.

(2) An insurance contract under which the insurer undertakes to provide suretyship or other security for the policyholder shall not be deemed to constitute an insurance contract.

Section 3 Insurance premium

(1) For the purpose of this Act, insurance premium means every type of payment which must be made to the insurer in order to establish and continue the insurance relationship. This especially includes:

1. premiums,
2. contributions,
3. advance contributions,
4. advances,
5. additional payments,
6. charges and
7. policy drafting fees and other ancillary costs.

The insurance premium does not include payments which must be made for a special service provided by the insurer or which are due to the behaviour of the individual policyholder. This especially includes the costs of issuing a replacement document and payment reminder expenses.

(2) If a dividend is set off against the regular premium payment and only the difference between the regular premium payment and the dividend is paid to the insurer, then this difference is the insurance premium. The same applies if it is not possible to set the dividend off against the regular premium payment and the credit notice concerning the dividend is presented to the policyholder together with the premium invoice.

Section 4 Exemptions from taxation

Insurance premiums paid for one of the following are exempt from the tax:

1. reinsurance;
2. insurance taken out by associations of public-law bodies to cover their expenses for pensions and survivors' pensions for their members;
3. accident insurance under the Seventh Book of the Social Security Code, unless it is based on section 140;
4. unemployment insurance under the Third Book of the Social Security Code and insurance based on the Expense Compensation Act; this also applies to insurance taken out with an institution within the meaning of section 12 subsection (1) of the Expense Compensation Act;

5. insurance providing entitlement to sums of capital, pensions, or other payments in the case of survival, sickness, nursing care dependency, occupational incapacity or disability, or of reduced earning capacity, old age or death. This does not apply to accident insurance, liability insurance and other non-life insurance. Number 3 above remains unaffected;
- 5a. insurance based on the Fourth Division of the First Part of the Occupational Pensions Act of 19 December 1974 (Federal Law Gazette I, p. 3610);
6. insurance taken out with a wage equalisation fund set up by the parties to a collective wage agreement to support employees in the case of a loss of working time;
7. an agreement as defined in section 2 subsection (1) which provides legal protection or support from a professional association in case of strikes, lockouts or disciplinary measures;
8. insurance taken out by one of the following types of policyholder:
 - a) diplomatic missions of foreign countries accredited by the Federal Republic of Germany,
 - b) members of the diplomatic missions mentioned under letter a) above and persons employed by these missions who have diplomatic immunity,
 - c) consular posts of foreign countries accredited in the Federal Republic of Germany if the head of the post is a citizen of the sending state and engages in no other remunerated activity in Germany besides his position in the consular post,
 - d) consular representatives accredited in the Federal Republic of Germany (consuls-general, consuls, vice consuls, consular agents) and persons employed by these consular representatives if they are citizens of the sending state and do not engage in any other remunerated activity in the Federal Republic of Germany besides their consular position.

The tax exemption applies only if reciprocity is granted;

9. insurance of livestock if the sum insured does not exceed 4,000 euros. If a policyholder has several livestock insurance policies with the same insurer, then the tax exemption applies only if all the insured amounts together do not exceed this limit;
10. insurance of transported goods against loss or damage as transport insurance including transport insurance of valuables and war-risk insurance if the insurance covers goods which are transported exclusively abroad or in cross-border traffic including transit; this does not apply to the transport of goods between two places in Germany where the goods are only in transit abroad. The taxation of the payment of an insurance premium for liability insurance remains unaffected.

Section 5

Calculation, chargeability and statement of tax

(1) The tax shall be calculated for the individual types of insurance as follows:

1. in general it is calculated from the insurance premium,
2. for insurance against damage to the insured produce of the soil arising from exposure to the weather-related natural hazards of hail, storm, heavy frost, heavy rainfall or flooding, and for insurance against damage as a result of hail, storm, heavy rainfall or flooding taken out in agriculture and horticulture for glass used to protect produce of the soil, the tax is calculated from the sum insured and for each year of coverage,

3. only in the case of
 - a) fire insurance and insurance against business interruption by fire (section 3 subsection (1) number 1 of the Fire Protection Tax Act), on 60 per cent of the insurance premium,
 - b) residential building insurance (section 3 subsection (1) number 2 of the Fire Protection Tax Act), on 86 per cent of the insurance premium,
 - c) home contents insurance (section 3 subsection (1) number 3 of the Fire Protection Tax Act), on 85 per cent of the insurance premium,

The Federal Central Tax Office may, upon application, permit the tax to be calculated not on actual receipts (cash accounting scheme), but on the insurance premium due in the tax return period pursuant to section 8 subsections (2) and (3) (accrual accounting scheme). In the case of calculation using the accrual accounting scheme, the tax already paid on uncollected insurance premiums is to be deducted from the tax for the tax return period in which the insurer has partially or completely terminated the insurance.

(2) In the case of the cash accounting scheme, the tax arises upon payment of the insurance premium if the payee is himself liable to pay under section 7, if not, the tax arises upon receipt of the insurance premium. In the case of the accrual accounting scheme, the tax arises upon the due date of the insurance premium. The first and second sentences above are to be applied accordingly to proportional insurance premiums.

(3) For the purpose of calculating the tax, amounts in foreign currencies are to be converted into euros using the VAT conversion rate which the Federal Ministry of Finance makes public as the average rate for the respective currency, for the month in which the insurance premium is paid or falls due in the case of the accrual accounting scheme. The Federal Central Tax Office may permit conversion to be made at the current daily rate as published by the banks or quoted on the markets.

(4) The tax amount is to be stated openly in the invoice for the insurance premium and the tax rate, as well as the insurance tax number issued by the Federal Central Tax Office, under which the tax is to be remitted, are to be specified. In the case of tax-exempt insurance premiums, the underlying tax-exemption provision is to be specified. If no invoice is issued for the insurance premium, the information specified in the first and second sentences above must be shown in other documents establishing the insurance relationship.

Section 6

Tax rate

(1) Except as specified in the following subsection, the tax is 19 per cent of the insurance premium without insurance tax.

(2) The tax rates for the following types of insurance are as follows:

1. for fire insurance and insurance against business interruption by fire (section 5 subsection (1), first sentence, number 3, letter a): 22 per cent;
2. for residential building insurance (section 5 subsection (1), first sentence, number 3, letter b): 19 per cent, and
3. for home contents insurance (section 5 subsection (1), first sentence, number 3, letter c): 19 per cent;
4. for insurance against damage from hail, storm, heavy frost, heavy rainfall and flooding, and for insurance against hail, storm, heavy rainfall or flooding taken out in agriculture and horticulture for glass used to protect produce of the soil, 0.3 per mille of the sum insured for each year of coverage;

5. for marine hull insurance: 3 per cent of the insurance premium under the condition that the ship is entered in the German shipping register, solely serves commercial purposes, and is insured against the perils of the sea;
6. for accident insurance with premium refund: 3.8 per cent of the insurance premium.

Section 7

Tax debtor, tax payment debtor, liable party

- (1) The policyholder is the tax debtor.
- (2) The insurer is the tax payment debtor, unless subsections (3) to (5) below appoint another person as the tax payment debtor, or, under subsection (6) below, the policyholder, as the tax debtor, must pay the tax. The tax payment debtor must, as an independent liability, pay the tax on behalf of the policyholder.
- (3) If the insurer has no residence, registered office, or permanent establishment in the European Union or the European Economic Area, but an agent with residence, registered office or permanent establishment in the specified territory has been authorised to receive the insurance premium, then this party is the tax payment debtor.
- (4) If several insurers have jointly taken on an insurance policy for the same policyholder to the effect that each of them has a certain share in the rights and obligations connected with the insurance policy, then one of the insurers with registered office or permanent establishment in the European Union or in the European Economic Area may be designated in writing by the other co-insurers to pay the tax for the other insurers as well.
- (5) If payment of tax has been delegated in writing to an agent with residence, registered office or permanent establishment in the European Union or the European Economic Area authorised to receive the insurance premium, then this agent is the tax payment debtor.
- (6) If neither the insurer nor an agent authorised to receive the insurance premium has his residence, his registered office or his permanent establishment in the European Union or the European Economic Area, then the policyholder must pay the tax.
- (7) The following shall be liable for the payment of tax, unless the persons specified in numbers 1 to 3 below are themselves the tax payment debtor:
 1. the insurer,
 2. any other person who receives the insurance premium,
 3. an insured person who, in return for a fee, obtains insurance cover from an insurance policy for the account of another. The liability extends to the tax that is chargeable on the insurance premium which is to be paid to the insurer in order to cover the risk of the insured person; in case of doubt, the fee paid by the insured person is to be used as the basis.
- (8) The tax debtor, tax payment debtor and any liable party are legitimate joint and several debtors. The liability for payment of tax is equivalent to the tax liability; it is not accessory in relation to the tax liability of the policyholder. A liable party may be held liable for the tax by means of a tax assessment notice or notice of liability. To define a taxpayer's period for assessment under sections 169 to 171 of the Fiscal Code, in each instance those circumstances that exist in relation to the person are the relevant ones; in particular, in the case of holding the tax payment debtor liable for the tax, the expiry of the period for assessment for the policyholder is irrelevant, and, in the case of holding the liable party liable for the tax, the expiry of the period for assessment for the tax payment debtor is irrelevant.
- (9) In the relationship between the insurer and the policyholder, the tax is deemed to constitute part of the insurance premium to the extent that the collection and legal enforcement of the tax are involved.

Section 7a

Jurisdiction

The Federal Central Tax Office has jurisdiction.

Section 8 Tax return, due date

(1) The tax payment debtor under section 7 subsections (2), (3), (4) or (5) must, within 15 days of the end of each tax return period:

1. submit a personally signed tax return or a tax return transmitted by means of an automated process of the Federation in which he must himself calculate the tax which has arisen in the tax return period (self-assessed tax return), and
2. pay over the tax which has arisen in the tax return period.

(2) The tax return period is the calendar month. If the total tax for the previous calendar year amounted to no more than 6,000 euros, then the tax return period is the calendar quarter. If the total tax for the previous calendar year amounted to no more than 1,000 euros, then the tax return period is the calendar year.

(3) If the policyholder has to pay the tax under section 7 subsection (6), then, within 15 days of the end of the month in which the insurance premium was paid, a self-assessed tax return corresponding to subsection (1) above is to be submitted and the self-assessed tax is to be paid over.

(4) If the party obliged to submit the self-assessed tax return or pay the tax fails to submit the self-assessed tax return by the tax return deadline, then the Federal Central Tax Office assesses the tax. The tax is due on the 15th day after the end of the tax return period.

Section 9 Refund and subsequent payment of the tax

(1) If the insurance premium is refunded in whole or in part because the insurance policy ends prematurely or because the insurance premium or the sum insured has been reduced, then the tax shall be refunded, upon application, to the extent that it would not have been chargeable when taking these circumstances into account. The tax shall be refunded to the tax payment debtor (section 7 subsections (2) to (5)) or to the liable party (section 7 subsection (7)) for the account of the tax debtor and in the case of section 7 subsection (6) refunded to the policyholder.

(2) The tax shall not be refunded if the premium refund was explicitly insured.

(3) If, in the case of the insurance of ships, the other conditions for taxability and liability to tax are fulfilled after payment of the insurance premium, then the tax is to be paid subsequently for the *pro rata temporis* insurance premium.

Section 10 Accounting obligations, external auditing, amendment after external auditing

(1) All joint and several debtors within the meaning of section 7 subsection (8), first sentence, who are obliged to keep accounts under the Fiscal Code or other laws, must keep records for the determination of tax and the basis on which it is calculated which contain all of the information relevant to taxation. This includes, in particular:

1. the name and address of the policyholder,
2. the number of the insurance policy; in the case of the authorised agents, the number of the respective insurer,
3. the sum insured,
4. the insurance premium, and namely both the taxable and tax-exempt component,

5. the tax amount,
6. the tax rate,
7. the IMO shop identification number allocated by Lloyd's Register on behalf of the International Maritime Organization,
8. the written authorisation within the meaning of section 7 subsections (4) and (5).

Any person who is obliged to pay over the tax under section 7 subsection (4) must record the total amount of the insurance premium as well as the numbers of the insurance policies of all of the participating insurers in his accounts. The insurers delegating the obligation to pay the tax must record in their accounts who has paid the tax for them. If the risk located within the territory of application of this Act is covered by an insurer who is not established in that territory of application, then that insurer must, upon request, submit in writing to the Federal Central Tax Office a complete schedule of the insurance relationships relating to these risks, including the information specified in the second sentence above. This obligation exists even if the insurer considers that the conditions for tax liability or payment of tax are not fulfilled.

(2) In the case of persons and associations of persons who mediate insurance policies or are authorised to receive payments on behalf of an insurer, an external audit (sections 193 to 203 of the Fiscal Code) to ascertain or clarify transactions which are taxable under this Act is also permissible to the extent it serves to determine the tax circumstances of other persons who, pursuant to section 7, are the tax debtor or tax payment debtor or who are liable for payment of the tax.

(3) An external audit is also permissible of persons and associations of person who have agreed upon an insurance contract within the meaning of section 2 or who, pursuant to section 7, are the tax debtor, tax payment debtor, or who are liable for payment of tax.

(4) Where an external audit determines that back taxes are due, or refunds must be made, these are to be assessed together with the tax for the last month, the last quarter or the last calendar year for the period audited. They are due one month from the date of disclosure of assessment.

Section 10a **Reporting obligations**

(1) The authorities responsible for supervising the insurance enterprises shall notify the Federal Central Tax Office of any insurers which come to their knowledge.

(2) The registration court shall inform the Federal Central Tax Office of entries of non-profit associations or co-operative associations which deal with the conclusion of insurance policies; this applies even if such non-profit or co-operative associations designate their services as services to which there is no legal entitlement.

Section 10b **Rules of application**

If a tax rate is changed or the payment of the insurance premium is exempted from the tax, the new tax rate or the new exemption regulation is to be applied to insurance premiums which fall due after the new tax rate or the new exemption enters into effect. If the due date of the insurance premium is changed for points in time after which a higher tax rate is to be applied, and if the change would lead to the application of a lower tax rate, the change is not to be taken into account in this respect. This applies accordingly if, in order to change the due date of the insurance premium, an insurance contract is terminated and immediately taken out again or if the due date of the insurance premium is set at a date before the conclusion of the insurance contract. The second and third sentences above apply to changes in the due date of the insurance premium made from 29 January 1993 for due dates from 1 July 1993 and from 1 January 1995.

Section 11 **Authorisations**

(1) The Federal Government shall be authorised to issue statutory instruments without the consent of the Bundesrat on:

1. the precise definition of terms used in this Act,
2. the demarcation of tax liability as well as the extent of exemptions from taxation and of tax reductions, to the extent that these are needed to ensure the equity of the tax system and to avoid inequities in cases of hardship,
3. the extent of the tax base,
4. (rescinded)
5. (rescinded)
6. the calculation of tax when the tax is included in the insurance premium,
7. the calculation of tax according to the insurance benefits,
8. the assessment of the tax in special cases in flat-rate amounts. This applies in particular if determination of the tax amounts would be difficult and would entail costs out of all proportion to the amount of tax to be collected,
9. the refund of the tax.

(2) The Federal Ministry of Finance may promulgate this Act and the statutory instruments issued on the basis of this Act in the relevant applicable version with a new date and with a new title in the Federal Law Gazette.

Section 12 **Transitional provision**

- (1) Section 1 subsection (4) is to be applied to insurance premiums which cover insurance periods from 1 January 2014 onwards.
- (2) Section 5 subsection (4) is to be applied for the first time to insurance premiums which fall due after 31 December 2013.